

APPENDIX

77DGAEDH

HEARING

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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AEDES DE VENUSTAS, INC.,

Plaintiff,

v.

07 CV 4530 (LTS)

VENUSTAS INTERNATIONAL, LLC,

Defendant.
-----x

New York, N.Y.
July 13, 2007
9:55 a.m.

Before:

HON. LAURA TAYLOR SWAIN,

District Judge

APPEARANCES

JOSEPH MICHAEL HEPPT
Attorney for Plaintiff

MATHEWS, SHEPHERD, MCKAY & BRUNEAU, P.A.
Attorneys for Defendant
BY: ROBERT GEORGE SHEPHERD

TAYLOR, COLICCHIO & SILVERMAN, LLP
Attorneys for Defendant
BY: PHILIP M. COLICCHIO

ALSO PRESENT: KARL BRADL
ROBERT GERSTNER
SAM GHUSSON

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Gerstner - direct

1 Q. What was the name of it? Do you remember?

2 A. It was called ThreeAsFour.

3 Q. Does the company Aedes De Venustas have any plans to expand
4 that type of consulting work in the future?

5 A. Absolutely.

6 Q. Can you describe to the Court your plans, the company's
7 plans for expanding on that consulting work?

8 A. Well, we're planning to bring more people on board so that
9 we will be able throughout the years to handle the demand,
10 which already started. I just came back recently from a trip
11 to the South of France sitting with different fragrance houses
12 and perfumers and manufacturers to prepare the groundwork for
13 us to be able to do so. And then Karl Bradl returned from
14 Paris just yesterday, and he did the same thing there in Paris
15 talking to different manufacturers and fragrance houses and
16 also completing a new project for our own Aedes De Venustas
17 label, because we realized this is a very important and also a
18 very lucrative additional field where we started to become
19 active in and where we, obviously, can do much more.

20 Q. Have you set any kind of time table for developing that
21 consulting work?

22 A. Nothing in particular. We just want to start getting this
23 off the ground over the next couple of years, four or five
24 years.

25 Q. Can you describe to the Court in general terms how it is

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Ghusson - direct

1 MR. SHEPHERD: Your Honor, if you look at
2 Mr. Gerstner's rebuttal declaration and also the brief and
3 response by Mr. Heppt, they try to make the point that they are
4 doing the same thing that we are doing. So what I am doing now
5 is I am explaining in greater detail exactly what this client
6 does, exactly what this business does so that your Honor will
7 understand the critical differences between what Mr. Heppt's
8 client does and what we do. And I think it is absolutely
9 proper rebuttal testimony. Plus, as I recall in the phone
10 call, I got the sense that we were entitled to go a little
11 broader than that. If I am repeating anything that was in our
12 original opposition, it is only just to make it better
13 contextually, so I believe that I'm giving rebuttal testimony,
14 because they're trying to say that they're in the same business
15 that we are, and we're not. And I think that's critical,
16 crucial to my client's case.

17 MR. HEPPT: Just to respond very briefly, your Honor,
18 we have not said that we're in the same business as
19 Mr. Ghusson's company. In fact, the arguments that were made
20 in my brief were that we are able to bridge the gap in the
21 future. And, in fact, Mr. Gerstner testified about plans for
22 developing their consulting business. We have never taken the
23 position, we've never argued, we've never stated to this Court
24 that we are doing exactly the same thing that they are doing.
25 We've never said that. We've said that we are doing similar

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Ghusson - direct

1 BY MR. SHEPHERD:

2 Q. How do you get these companies to be your client?

3 THE COURT: Does that conclude the sealed portion?

4 MR. SHEPHERD: Yes, your Honor. I'm sorry.

5 THE COURT: Okay. Thank you.

6 A. Basically they came to us. Both approached us through
7 contacts. I'll start with Hollister. Hollister used to be
8 owned by The Limited, and Victoria Secret was owned by The
9 Limited. Robin was the president of Victoria Secret beauty,
10 Robin Burns my partner. And the chairman of Abercrombie and
11 Fitch, who owns the Hollister stores, also was president and
12 chairman of Abercrombie and Fitch, who knew of Robin. When
13 Robin retired from Victoria Secret, he contacted in an effort
14 to have her work for him, and she told him that she was retired
15 but there might be a possibility in the future that she will
16 start her own company, and he said, when you do, please call
17 me, because I would love to work with you. And that's how we
18 got to Abercrombie and Fitch.

19 As to Ann Taylor, we have a contact at the editor, I
20 believe, of Cosmetic World. Mr. George Ledes is friends with
21 the chairman of Ann Taylor. They were on the golf course some
22 day, and he found out through her that she's interested in
23 developing the beauty business. And she was talking to a third
24 company, and he asked her not to make any decisions till she
25 meets with Robin Burns and her partner. So Robin Burns and I

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Ghusson - direct

1 met with the chairman of Ann Taylor and the president of Ann
2 Taylor and basically presented our expertise to them, and we
3 have an agreement to do production and manufacture for them.

4 Q. Do you do any advertising?

5 A. Absolutely not.

6 Q. Do you have a Web site?

7 A. As of now, we do, yes.

8 Q. When did that Web site go up?

9 A. I believe this week sometime.

10 Q. I'm going to show you a document that I've marked as
11 Defendant's Exhibit B for identification. Can you tell me what
12 that is?

13 A. That is our Web site, my company's Web site.

14 Q. What is the purpose of that Web site?

15 A. The purpose of this Web site is so that if people want to
16 know about our company or reach me or Robin, they know our
17 offices and our locations.

18 Q. You also now have a telephone number in New York City
19 that's listed with directory assistance?

20 A. Yes, I do.

21 Q. How long has that been online?

22 A. We obtained the number two to three weeks ago.

23 Q. Are you aware of any instances where people have called
24 looking for Aedes De Venustas since this telephone number was
25 now listed with directory assistance?

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Ghusson - direct

1 A. No, sir.

2 Q. Now, once you have a client, how does the design process or
3 the production process start?

4 A. First of all, when we have a client, the first thing we do
5 is we sign a long-term agreement with them where we are the
6 exclusive development and manufacturer for the personal care
7 business. Unless we have that, a long term, and unless we're
8 the exclusive, we will not work with them. So that is the
9 first step. We sign an agreement with them. That is long-term
10 renewable terms, and we basically -- the process is we will
11 come up with the product concept, the marketing concept, the
12 positioning the product. We will work with the fragrance
13 houses to develop the fragrance. We will take the fragrance to
14 them. We'll have their approval on it because of the ultimate
15 customer. We will bring in designers from outside, or we use
16 their in-house design if they elect to. We'll work with their
17 designer on positioning the brand. We'll design a package, the
18 bottle, the cap, the box, the labels. We will take their
19 design. We will source it with a bottle maker. We will make
20 models with model makers, yes.

21 Q. So first of all, the marketing team has gone in and they've
22 created the concept. Then you've gone through the fragrance
23 and product development with that group?

24 A. Correct.

25 Q. Now, how many people are on each of these teams working

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Ghusson - cross

1 it's industry recognition of your achievement. Correct?

2 A. It's an honor to be nominated, and it's a big honor to win
3 it.

4 Q. Now, I think you testified about how your clients come to
5 you --

6 A. Yes, sir.

7 Q. -- at Venustas International. And my notes indicate that
8 it's basically through word of mouth. Is that correct?

9 A. The two customers that we have came to us through the word
10 of mouth, correct.

11 Q. And you also testified that you don't advertise at all --
12 presently you don't plan on advertising. Is that correct?

13 A. Absolutely correct.

14 Q. And you also testified that -- I'm not sure if you
15 testified today or whether it's in your declaration, to be
16 honest with you, but I think you had indicated at some point
17 that your name Venustas International will never appear on a
18 product that's sold. Correct?

19 A. That's absolutely correct.

20 Q. Then what would be the harm to your company if you changed
21 the name of your company, which has been in existence for less
22 than a year?

23 A. The harm to our company -- if this came up in July of 2006,
24 it wouldn't have been any harm at all. Now, a year later, we
25 have already orders, purchase orders placed with our suppliers.